Supreme Court of the United States

OCTOBER TERM 1944.

No. 1044

ROBERT BOLAND BROOKS,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI.

TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The petition of Robert Boland Brooks respectfully shows to this Honorable Court:

A.

Statement of Case.

The petitioner duly registered under the Selective Training and Service Act of 1940 and was classified under IV-E as a conscientious objector opposed to non-combatant as well as to combatant military service. No appeal was taken by either party. In the District Court for the Southern District of New York, petitioner was indicted for violation of the Act upon refusal to report as assigned to the Government-operated camp at Mancos, Colorado, established by Selective Service for conscientious objectors. Petitioner's demurrer and plea in abatement asserting constitutional rights hereafter outlined were

overruled. At trial, a jury being waived, he was convicted. On appeal, the Circuit Court of Appeals for the Second Circuit affirmed the conviction.

The legality and constitutionality of the Selective Service Rules and Regulations, and in certain respects of the Act of 1940, are the issue.

B.

Opinions Below.

The District Court opinion of April 20, 1944, overruling the demurrer and plea in abatement of the petitioner, is reported in 54 Fed. Supp. 995 (R. 13-20). No written opinion was delivered by the trial Judge.

The opinion of the Circuit Court of Appeals for the Second Circuit of February 2, 1945, affirming the conviction, not yet reported, appears at R. .....

C.

Jurisdiction.

Petitioner submits that this Court has jurisdiction to review said judgment of affirmance under Judicial Code, §240, as amended, and under the Act of March 8, 1934, 48 Stat. 399, 18 U. S. C. A. §688, and the Rules of this Court.

D.

Statute Involved, Rules and Regulations.

(a) The statute involved is the Selective Training and Service Act of 1940, 50 U. S. C. A. App. §§301, 305(g), 310, 311.

The key section 305(g) merely provides that IV-E men shall be "assigned to work of national importance under civilian direction", but without any specification of stand-

ards of assignment to work, or other directions for implementing the exemption. Section 310 empowers the President to prescribe the necessary rules and regulations and to create and establish a Selective Service system. The preamble, Section 301, deals only with the general purpose, to increase and to train military forces and to accomplish this by universal military service—without any mention of the conscientious objector. Section 311 contains the customary punitive provisions for violations.

(b) The President by Executive Order No. 8675 (6 F. R. 831) authorized the Director of Selective Service to "establish, designate or determine work of national importance under civilian direction" for those classified as so opposed to all military service, to make the necessary assignments to such work, to have general supervision and control over it, and to utilize other departments, offices and agencies of the government.

(c) The Director devised elaborate Rules (7 F. R. 508) for objectors assigned to certain camps established and operated by Selective Service itself. Material portions of these Rules are summarized in the Record, pages 57-59, and more fully set forth at Record 66-67.

The Director set up a Selective Service camp at Mancos, Colorado (R. 62), to which petitioner was assigned by his Local Board and to which he refused to go after having duly complied with all administrative requirements of the Act up to that stage.

The principal facts were summarized for trial by a Stipulation between the parties, which, with its exhibits, appears at Record 55, *et seq.*

QUESTIONS PRESENTED.

1. The institution of the internment camps coupled with deprivation of the pay, allowances and privileges authorized by Congress, with forced labor required of the internees for adjacent private farmers without pay for the labor done, and with other incidents of the rules and regulations, constitute a system which was never contemplated or authorized by the Congress in the Act, hence invalid.

The only direction of the statute is to "work of national importance under civilian direction". The debates upon the bill in both houses of Congress, the committee reports, the testimony and general record of committee hearings, are so completely silent as to afford no basis for the characteristics of the camp system subsequently created by the Director. Concededly, a large measure of discretion was vested by the Act in the Executive and is to be similarly exercised by the administrative agency so created. Petitioner asserts that the system created is so alien to American traditions, so devoid of sanction and precedent in all our legislative history, that being unrelated to military service, military training, the defense and security of the country, it must fairly be adjudged beyond the intent of the Congress.

By successive annual appropriation acts, Congress specifically authorized for the classified conscientious objectors "the pay and allowance of such individuals at rates not in excess of those paid to persons inducted into the army under the Selective Service system, and such privileges as are accorded such inductees" (Act of April 5, 1941, Public Law 28, 77th Congress, Ch. 40—1st Sess., p. 28; Act of June 27, 1942, Public Law 630, 77th Congress, Ch. 450—2d Sess.).

Selective Service has, notwithstanding this direction, refused to permit such pay, allowances and privileges to be made or granted to the camp assignees.

The Rules for the camps, including Mancos, vest in the Camp Director "punitive powers", which include "(8) imposition of additional service, not to exceed more than 40 days in any 12-month period, subject to approval of the Director of Selective Service" (R. 67).

Under the Selective Service Camp Division "Administrative Directive No. 16" of July 30, 1943, entitled "Use of Assignees to Relieve Agricultural Labor Shortage", the men at such camps may be assigned "for agricultural labor within a 15-mile radius of the camp" for private farm owners. Those owners are required to provide transportation for the men and to pay "the prevailing wage as determined by the County Farm Wage Board". The "Project Superintendent collects the pay due for assignee service from the farmers and transmits it through the regular technical channels to the Treasury of the United States for segregation in the same fund as money collected for individual farm labor".

There is no provision for paying out these wages so covered into the Treasury, to the men who have supposedly earned the wages.

"The work is not voluntary and men refusing to perform farm labor will be subject to prosecution."

The text of the material portions of this Administrative Directive is reproduced as an appendix hereto.

The petitioner does not contend that this required outside farm labor is not "work of national importance". He does contend that the compulsory character of the work which was in fact imposed at Mancos Camp and the withholding of all pay, allowances and privileges similar to

those of military inductees, violates flatly the mandates of the appropriation acts quoted above and so outrages every standard of fair treatment as to fall far beyond the limits of administrative discretion where, as here, there is neither a past precedent nor warrant in the purpose, text or history of the underlying statute. The assignees to the camps are not convicted criminals but men entitled to and supposedly enjoying an honorable status.

This situation is novel in our legal history. There are no decisions known to petitioner which treat of any analagous situation, other than those of the several lower Federal Courts in similar cases arising under this Act of 1940 and the Selective Service actions. The principle succinctly declared and applied in *People* v. *Barber,* 289 N. Y. 378 (1943), is equally applicable here:

> "We may not impute to a legislative body an intent to adopt a statute or ordinance which might be used as an instrument for the destruction of a right guaranteed by the Constitution which executive and legislative officers of government, no less than judges, are sworn to maintain. For that reason an ordinance or statute should be construed when possible in manner which would remove doubt of its consstitutionality, and possible danger that it might be used to restrain or burden freedom of worship or freedom of speech and press" (p. 385).

2. The work project of the Mancos Camp being non-military in nature and not in aid of the defense or security of the United States, is it within the power of Congress under the Constitution to conscript labor for non-military, non-defense purposes of indefinite duration?

Mancos Camp is the site of a former Civilian Conservation Corps camp, since abandoned. The chief project there is the construction of an earthwork irrigation dam, initiated by the CCC prior to the 1940 Act, then abandoned and later resumed under the supervision of the Bureau of Reclamation of the Department of the Interior (R. 63-64) for Selective Service. Assignees to this camp are put to work on this specific project or at times their labor may be contracted out to the adjacent farm owners under the Administrative Directive No. 16 cited above.

A pre-war irrigation plan to fertilize arid land is inherently non-military. Petitioner in the District Court made vigorous assertion that this project work was not in aid of the defense of the United States, and so alleged in the plea in abatement (R. 8, 1st line), to which the Government demurred.

The initial question is whether Congress ever intended, even under a draft act of military preparedness purpose adopted in the shadow of possibly impending war (September 1940), to draft into non-military and non-defense work citizens who remain civilians never assimilated into the armed forces. An assumption of such intent is unwarranted without express evidence. There is no such evidence in the Act or in its legislative history.

The next question is, assuming by a strained construction that such was the intent, whether Congress has the

power under the Constitution to draft labor for general purposes of national welfare. Petitioner contends that the imminence or the actuality of war do not confer upon the Federal Government powers not expressed nor implied in the Constitution. *National City Bank* v. *U. S.*, 275 Fed. 855, 859 (C. C. A. 2); *Hirabayashi* v. *United States*, 320 U. S. 81, 107, 110, 111, 113 (1943).

3. If intent and delegation of power be found in the Act of 1940 to cover the camp system and the type of work there required, then the Act itself as applied in this manner to the petitioner as a certified conscientious objector violates the First, Fifth and Thirteenth Amendments.

(a) It is not here contended that Congress has no power to draft conscientious objectors into the armed services. Congress has not done so and that question is not involved in this case. It is asserted that the First Amendment, protection of freedom of religion, is offended by subjecting those who claim the legislative privilege of exemption to the quasi-penal system of the camp procedure, disciplinary abuse of power typified by the provisions cited, arbitrary extension without trial of the period of a man's service for disobedience of any order, deprivation of pay, allowances and privileges equal to those of military inductees.

(b) To require such labor without equal pay and privileges when both have been expressly authorized as cited, is both deprivation of property without due process, and is such a glaring inequality in the discrimination practiced as to constitute of itself denial of due process.

(c) The contracting-out-of-labor feature for an indefinite period as revealed above, should be reviewed by this Court in the light of the Thirteenth Amendment. There is no fair analogy here to temporary road repair work, fire-fighting and flood control services that may be lawfully required for short periods to meet such emergencies. The assignees are sent to the camps for the period of the war plus six months.

Petitioner concedes that there are no apposite cases, but points out that no American legislature or government agency has ever before thought up these features of humiliation and indefinite forced labor for the money benefit of others—except for convicts. These assignees have lost none of the privileges of citizens by reason of their claim to military exemption. Their consciences are part of the badge of reasonable freedom in a democracy. It is a travesty to grant initial exemption from military service and then to subject them to these indignities of the Selective Service camp system. There is an area of work which may properly be required, it is conceded, without permitting an administrative agency, however preoccupied in raising an army, to subject these citizens to disciplinary and other degrading features which may not lawfully be imposed even upon convicted criminals.

4. Importance of questions involved.

Some 3,000 registered IV-E's have been convicted of violation of the Act, six times as many as in 1917-18, and twice as many in proportion to the relative numbers called for service in these two wars. A number of the objectors have protested by civil process or under criminal indictment the legality and constitutionality of the Rules and

Regulations and of the Act itself. In other Circuits—the First, Fifth, Sixth and Seventh—these assertions have all been rejected unanimously. The very number of those convicted and of those who, with deep conviction, insist that the system violates fundamental rights, should induce this Court to grant a review in a case such as this which contains in the record the principal contentions common to most of the cases heretofore decided adversely in the lower Courts.

WHEREFORE, your petitioner respectfully prays that a write of certiorari be issued out of and under the seal of this Honorable Court directed to the Circuit Court of Appeals for the Second Circuit, commanding that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a transcript of the record and proceedings herein, and that the judgment of the District Court for the Southern District of New York be reversed by this Honorable Court, and your petitioner have such other and further relief in the premises as to this Honorable Court may seem meet and just.

Respectfully submitted,

ROBERT BOLAND BROOKS,

By ERNEST ANGELL,
Counsel for Petitioner.